

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

UNITED STATES OF AMERICA	§	
	§	
V.	§	CASE NO.2:09-CR-3 TJW-CE
	§	
JOSE HERNANDEZ	§	

FINDINGS OF FACT AND RECOMMENDATION ON GUILTY PLEA
BEFORE THE UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636(b), this matter has been referred by the District Court for administration of a plea of guilty and allocution under Rule 11 of the Federal Rules of Criminal Procedure.

On September 22, 2009, this cause came before the undersigned United States Magistrate Judge for a plea of guilty and allocution of the defendant on an indictment charging the defendant in Count 1 with a violation of 21 U.S.C. § 841(a)(1), Possession with Intent to Distribute Cocaine. After conducting said proceeding in the form and manner prescribed by Fed. R. Crim. P. 11, the Court finds:

- a. That the defendant, after consultation with counsel of record, has knowingly and voluntarily consented to the administration of the Guilty Plea and Allocution in this cause by a United States Magistrate Judge, subject to a final approval and imposition of sentence by the District Court.
- b. That the defendant and the government have entered into a plea agreement which has been filed and disclosed in open court pursuant to Fed. R. Crim. P. 11(c)(2).
- c. That the defendant is fully competent and capable of entering an informed plea, that

the defendant is aware of the nature of the charges and the consequences of the plea, and that the plea of guilty is a knowing and voluntary plea supported by an independent basis in fact containing each of the essential elements of the offense.

d. That the defendant understands his constitutional and statutory rights and wishes to waive these rights, including the right to a trial by jury and the right to appear before a United States District Judge.

IT IS THEREFORE RECOMMENDED that the District Court accept the Plea Agreement and the Guilty Plea of the defendant and that Jose Hernandez should be finally adjudged guilty of that offense.

A party's failure to file written objections to the findings, conclusions, and recommendations contained in this Report within ten days after being served with a copy shall bar that party from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglas v. United States Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).

SIGNED this 1st day of October, 2009.


CHARLES EVERINGHAM IV
UNITED STATES MAGISTRATE JUDGE